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*Counsel for 1414 Utica Avenue Lender LLC*

UNITED STATES BANKRUPTCY COURT  
 EASTERN DISTRICT OF NEW YORK

-----	x	
	:	
In re:	:	Chapter 11
	:	
CORT & MEDAS ASSOCIATES, LLC,	:	Case No.: 19-41313 (CEC)
	:	
Debtor.	:	
	:	
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**NOTICE OF APPEAL**

Pursuant to Rule 8003(a) of the Federal Rules of Bankruptcy Procedure and 28 U.S.C. § 158(a), 1414 Utica Avenue Lender LLC, by and through its counsel Rubin LLC, hereby submits this appeal to the United States District Court for the Eastern District of New York from the Bankruptcy Court’s *Order With Respect to the Claims of 1414 Utica Avenue Lender LLC and Empire State Certified Development Corporation* (the “Order”) [ECF No. 146], entered in the above-captioned bankruptcy case on the 10th day of August, 2020. A copy of the Order is annexed hereto as Exhibit A. The E.D.N.Y. Civil Cover Sheet is annexed hereto as Exhibit B.

The names of all the parties to the order appealed from and the names, address, and telephone numbers of their respective attorneys are as follows:

**APPELLANT**

1414 Utica Avenue Lender LLC  
*Represented by:*  
Rubin LLC  
345 Seventh Avenue, 21st Floor  
New York, NY 10001  
Tel: (212) 390-8054  
Attn: Paul A. Rubin

**APPELLEE**

Empire State Certified Development Corporation  
*Represented by:*  
Lemery Greisler LLC  
50 Beaver Street, 2nd Floor  
Albany, NY 12207  
Tel: (518) 433-8800  
Attn: Paul A. Levine  
Meghan M. Breen

Dated: New York, New York  
August 24, 2020

RUBIN LLC

By: /s/ Paul A. Rubin  
Paul A. Rubin

345 Seventh Avenue, 21<sup>st</sup> Floor  
New York, New York 10001  
Tel: 212.390.8054  
Fax: 212.390.8064  
prubin@rubinlawllc.com

*Counsel for 1414 Utica Avenue Lender LLC*

**EXHIBIT A**  
**(ORDER)**

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
In Re:

Chapter 11

CORT & MEDAS ASSOCIATES, LLC,

Case No.: 19-41313 (CEC)

Debtor.

-----X

**ORDER WITH RESPECT TO THE CLAIMS OF 1414  
UTICA AVENUE LENDER LLC AND EMPIRE STATE  
CERTIFIED DEVELOPMENT CORPORATION**

Upon the application of 1414 Utica Avenue Lender LLC (“1414 Lender”), dated May 12, 2020, seeking the entry of an Order (i) pursuant to 11 U.S.C. §§ 101(5), 105(a), 501(a) 502(a) and Federal Rules of Bankruptcy Procedure 3001, 3007, 3012 (a) declaring that 1414 Lender is the holder of Claim No. 7-1 (“1414 Lender’s Claim”) pursuant to, inter alia, that first lien mortgage encumbering the real property of the Debtor commonly known as 1414 Utica Avenue, Brooklyn, New York (the “Property”), (b) which is entitled to payment prior in time to any claim (or lien) of mortgagee, Empire State Certified Development Corporation (“ESCDC”), and to the extent that this Court determines that ESCDC should otherwise be entitled to payment on account of the proof of claim filed by ESCDC (Claim No. 6-1) (“ESCDC’s Claim”) prior in time to that of 1414 Lender, alternatively, (c) determining that the amount of the ESCDC Claim to be entitled priority as of March 31, 2020 was not more than \$154,995.00, and (ii) granting 1414 Lender such further and different relief as the Court may deem just and proper [ECF Doc#111 & 112] (the “Motion”); and ESCDC having filed a response to the Motion on June 17, 2020 [ECF Doc#116] (the “ESCDC Response”); and 1414 Lender having filed a reply to the ESCDC Response on June 24, 2020 [ECF Doc#121]; and upon all the pleadings and proceedings had in this case; and upon the record of the hearing held on June 24, 2020 with regard to the Motion; and after due deliberation and sufficient cause appearing therefor; and for the reasons set forth on the record at the hearing, which are hereby incorporated by reference as the Court’s findings of fact and conclusions of law;

IT IS HEREBY:

ORDERED, that the Motion be, and is hereby DENIED to the extent set forth herein; and it is further

ORDERED, that 1414 Lender's Claim is senior to ESCDC's Claim with respect to principal and non-default rate interest; and it is further

ORDERED, that 1414 Lender remains bound by the terms and conditions of the Third Party Lender Agreement, dated December 29, 2009 (the "Intercreditor Agreement"), and is therefore subordinated to the ESCDC as set forth in the Intercreditor Agreement; and it is further

ORDERED, that pursuant to the terms of the Intercreditor Agreement, that portion of 1414 Lender's Claim relating to Default Charges, as defined in the Intercreditor Agreement including "escalated interest after default due under the Third Party Loan," in the amount of \$569,204.10 as set forth in Exhibit Z to 1414 Lender's Motion [ECF Doc # 111-33], is subordinated to ESCDC's Claim; and it is further

ORDERED, this Court retains jurisdiction to resolve all matters arising under or related to this Order, and to interpret, implement, and enforce the provisions of this Order.

**Dated: Brooklyn, New York  
August 10, 2020**



  
\_\_\_\_\_  
**Carla E. Craig**  
**United States Bankruptcy Judge**

**EXHIBIT B**  
**(CIVIL COVER SHEET)**

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

## I. (a) PLAINTIFFS

1414 Utica Avenue Lender LLC

## (b) Attorneys (Firm Name, Address, and Telephone Number)

Rubin LLC (Attn: Paul Rubin)

345 Seventh Avenue, 21st Floor, New York, NY 10001

Tel: 212-390-8054

## DEFENDANTS

Empire State Certified Development Corporation

## Attorneys (If Known)

Lemery Greisler LLC (Attn: Paul A. Levine &amp; Meghan M. Breen)

50 Beaver Street, 2nd Floor, Albany, NY 12266 Tel: 518-433-8800

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |                            |                            |   |                            |                            |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
|   | PTF                        | DEF                        |   | PTF                        | DEF                        |
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

## IV. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITING A BRIEF STATEMENT OF CAUSE) (DO NOT CITE JURISDICTION STATUTES UNLESS DIVERSITY)

11 U.S.C. § 502

## V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

## VI. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input checked="" type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

August 24, 2020

FOR OFFICE USE ONLY

SIGNATURE OF ATTORNEY OF RECORD

Paul Rubin/H/H

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE



**PLAINTIFF(S) ADDRESS(ES) AND COUNTY(IES)**

1414 Utica Avenue Lender LLC  
 Rubin LLC (Attn: Paul Rubin)  
 345 Seventh Avenue, 21st Floor  
 New York, NY 10001

**DEFENDANT(S) ADDRESS(ES) AND COUNTY(IES)**

Empire State Certified Development Corporation  
 Attn: Paul A. Levine and Meghan M. Breen  
 50 Beaver Street, 2nd Floor  
 Albany, NY 12207

**DEFENDANT(S) ADDRESS UNKNOWN**

REPRESENTATION IS HEREBY MADE THAT, AT THIS TIME, I HAVE BEEN UNABLE, WITH REASONABLE DILIGENCE, TO ASCERTAIN THE RESIDENCE ADDRESSES OF THE FOLLOWING DEFENDANTS:

**RELATED CASE STATEMENT (Section VIII on the Front of this Form)**

Please list all cases that are arguably related pursuant to Division of Business Rule 50.3.1 in Section VIII on the front of this form. Rule 50.3.1 (a) provides that "A civil case is "related" to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 50.3.1 (b) provides that "A civil case shall not be deemed "related" to another civil case merely because the civil case: (A) involves identical legal issues, or (B) involves the same parties." Rule 50.3.1 (c) further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (d), civil cases shall not be deemed to be "related" unless both cases are still pending before the court."

**NY-E DIVISION OF BUSINESS RULE 50.1(d)(2)**

- 1.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County?  
☐ Yes ☐ No
- 2.) If you answered "no" above:  
 a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? ☐ Yes ☐ No  
 b) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District?  
☐ Yes ☐ No  
 c) If this is a Fair Debt Collection Practice Act case, specify the County in which the offending communication was received:  
 \_\_\_\_\_

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County? ☐ Yes ☐ No

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

**BAR ADMISSION**

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.



Yes



No

Are you currently the subject of any disciplinary action(s) in this or any other state or federal court?



Yes (If yes, please explain)



No

I certify the accuracy of all information provided above.

Signature: Paul Rubin / H#